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Attorneys for Plaintiff
Network Video Technologies, Inc.

E-filing

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

HRL

CV 08

2208

Civil Action No.

**NETWORK VIDEO
TECHNOLOGIES, INC.,**

Plaintiff,

v.

**NITEK INTERNATIONAL, LLC;
and DOES 1-10,**

Defendants.

**COMPLAINT FOR DECLARATORY
JUDGMENT OF PATENT NON-
INFRINGEMENT, INVALIDITY AND
UNENFORCEABILITY**

DEMAND FOR JURY TRIAL

Plaintiff, NETWORK VIDEO TECHNOLOGIES, INC., by and through its undersigned counsel, brings this action against Defendants NITEK INTERNATIONAL, LLC and DOES 1-10 and complains and alleges upon information and belief as follows:

JURISDICTION AND VENUE

1
2 1. This is an action for declaratory judgment of non-infringement, invalidity
3 and unenforceability of United States Patent No. 7,193,149.

4 2. This Court has jurisdiction pursuant to 28 U.S.C. § 2201 et. seq. and 28
5 U.S.C. §1338(a) et. seq.

6 3. Venue is proper pursuant to 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

7 **THE PARTIES**

8 4. Plaintiff, NETWORK VIDEO TECHNOLOGIES, INC. ("NVT"), is a
9 California Corporation in good standing with its principal place of business in this
10 Judicial District at 4005 Bohannon Drive, Menlo Park, California.

11 5. Defendant, NITEK INTERNATIONAL, LLC ("Nitek"), is an Illinois
12 limited liability doing business in this Judicial District and having its principal place
13 of business at 5410 Newport Drive, Ste. 24, Rolling Meadow, Illinois.

14 6. Nitek's contacts with the State of California are significant and
15 pervasive. The State of California is a large and important market for the sale of
16 Nitek's products. Nitek has sales representatives and numerous dealers and
17 distributors located in the State of California that market, promote and sell Nitek's
18 products, including those products Nitek claims are covered by the '149 Patent.
19 Nitek has conducted business continuously and systematically in the State of
20 California and in this judicial district for years, and continues that business actively
21 today.

22 7. Defendants DOES 1-10 are currently unknown to Plaintiff. Plaintiff will
23 amend this Complaint to assert their true names and capacities when ascertained.

24 8. Defendants, and each of them, are, and at all terms herein were, the alter
25 ego, principal, agent, employee, employer, partner, joint venturer, and/or otherwise
26 affiliated with one another so as to be liable in such capacity for the acts and injuries
27 alleged herein.
28

FIRST CAUSE OF ACTION

DECLARATORY JUDGMENT

9. NVT incorporates by reference paragraphs 1-8 as though fully set forth herein.

10. Nitek is the owner of record of United States Patent No. 7,193,149 entitled "System Handling Video, Control Signals and Power" (the '149 Patent). The '149 Patent issued on March 20, 2007.

11. NVT designs, manufactures and sells products for transmitting closed circuit television ("CCTV") over unshielded, twisted pair ("UTP") wire in structured cabling networks, such as those that are commonly used in office buildings for telephone systems and computer networks. NVT's products enable the use of UTP wire in structured cabling systems for video security cameras and security camera system applications ("CCTV systems"). They enable electric power, video signals and data signals to be transmitted over UTP wire. NVT is considered the premier supplier of "power/video/data" twisted pair solutions (PVDtm) for the CCTV industry.

12. Like NVT, Nitek sells products for transmitting CCTV over UTP cabling, which include those products Nitek sells under the name "UTPLinks". NVT and Nitek are direct competitors.

13. Nitek broadly claims the '149 Patent covers the use of UTP structured cabling for CCTV applications. Nitek also claims that the '149 Patent covers the "core technology" of its UPTLinks products, which are the products that Nitek sells in competition with NVT's products.

14. Prior to the issuance of the '149 Patent, Nitek did not correspond or communicate directly with NVT, by email or otherwise. However, after the '149 Patent issued, Nitek immediately e-mailed NVT about Nitek's newly issued '149 patent. That e-mail, written by Nitek's president and founder and presented as a patent news release, included notice about Nitek's '149 Patent and alleged that the '149 Patent covered the use of structured cabling for CCTV, for which NVT and

1 Nitek are direct competitors. Nitek also sent that same e-mail including the same
2 patent news release directly to NVT's customers and sales representatives.

3 15. Nitek's statements about the '149 Patent and its alleged sweeping scope
4 caused NVT's customers and sales force to become worried about the legal risks
5 associated with selling NVT's products and product solutions. Anixter, Inc., an
6 important customer of NVT and the co-owner of the '149 patent when it issued, also
7 expressed its concern that NVT might face a claim patent infringement by Nitek.

8 16. Nitek, through its agents, also told NVT sales representatives that Nitek
9 intended to enforce the '149 Patent against competitors and intimated that NVT was a
10 target.

11 17. Nitek also then attempted to extract royalties from NVT in exchange for
12 a license to the '149 patent.

13 18. By its actions and statements that the '149 Patent covered the technology
14 in NVT's competing products, product solutions, and product uses, Nitek sought to,
15 and did, create a cloud on the competitive environment and the business community,
16 including with NVT's customers and sales representatives.

17 19. Nitek also presented an onerous written patent license agreement to NVT
18 for the '149 Patent. Under that license agreement, Nitek sought to severely restrict
19 NVT's competing business and to provide Nitek with a competitive advantage over
20 NVT.

21 20. According to Nitek, the NVT products that are at-issue include, but are
22 not limited to, NV-16PS13-PVD, NV-16PS10-PVD, NV-8PS13-PVD, NV-704J-
23 PVD, NV-716J-PVD, NV-216A-PV and NV-218A-PVD) and all "combiners" that
24 combine power, video and data and all "distributors" which handle power and video.

25 21. NVT believes that the '149 patent is invalid, unenforceable and not
26 infringed, and that NVT does not require a license to the '149 patent.

27 22. NVT denies infringing '149 Patent and asserts it has the right to
28 manufacture and sell its products, including those described above.

1 23. NVT further asserts the '149 Patent is invalid under Title 35 of the
2 United States Code.

3 24. NVT further asserts that the '149 Patent is unenforceable due to
4 inequitable conduct by the applicants and/or their representatives and/or agents during
5 the prosecution of the application for the '149 Patent. That inequitable conduct
6 includes making knowingly false statements about prior art to obtain allowance of the
7 '149 Patent claims. Specifically, false statements were included in, at least ¶¶ 7 and 8
8 of the Declaration of William C. Curran ("Curran Declaration") dated November 30,
9 2006 and on pages 11 and 12 in the Remarks section of the papers submitted to the
10 Patent Office with the Curran Declaration.

11 25. As a result of the all of the foregoing, and in light of all the relevant
12 circumstances, there is a substantial controversy of sufficient immediacy and reality
13 between NVT and Defendants as to: (1) Defendants' rights under the '149 Patent; (2)
14 the validity, enforceability, and scope of the '149 Patent; and (3) whether any of
15 NVT's products infringe any valid claims of the '149 Patent, so as to warrant the
16 issuance of a declaratory judgment by this Court.¹

17 26. The court should exercise its broad discretion to adjudicate this action
18 under the Declaratory Judgment Act. There is no better or more effective remedy for
19 resolving the present controversy. Such an adjudication will serve the underlying
20 purposes behind the Declaratory Judgment Act, including clarifying the parties legal
21 relations and settling the controversy between the parties with certainty and finality.

22 **DEMAND FOR RELIEF**

23 **WHEREFORE**, Plaintiff asks this Court to:


24 a. Enter judgment for Plaintiff that the '149 Patent is invalid and
25 unenforceable;

26
27 ¹ Plaintiff originally sued in the United States District Court for the Central
28 District of California, Case No. CV-07-4789 AHM (RZx). While the District Court
determined that there was a controversy sufficient to warrant declaratory relief, the
Court dismissed the case without prejudice on discretionary grounds believing that
venue in the Central District was tenuous.

- 1 b. Enter judgment for Plaintiff of non-infringement;
2 c. Award Plaintiff its reasonable attorneys' fees and costs; and
3 d. Award Plaintiff such other and further relief as is just and proper.
4

5
6 DATED: April 28, 2008

Respectfully submitted,
THE HECKER LAW GROUP, PLC

7 By: 
8 Gary A. Hecker, Esq.
9 James M. Slominski, Esq.


10 Attorneys for Plaintiff
11 Network Video Technologies, Inc.

12 **DEMAND FOR TRIAL BY JURY**

13 Pursuant to FRCP 38, Plaintiff hereby demands a trial by jury.
14

15 DATED: April 28, 2008

Respectfully submitted,
THE HECKER LAW GROUP, PLC

17 By: 
18 Gary A. Hecker, Esq.
19 James M. Slominski, Esq.

20 Attorneys for Plaintiff
21 Network Video Technologies, Inc.
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CIVIL COVER SHEET

HRL

JS 44 (Rev. 12/07) (and rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

Network Video Technologies, Inc.

DEFENDANTS

Nitek International, LLC and DOES 1-10

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gary A. Hecker, James M. Slominski
The Hecker Law Group, PLC
1925 Century Park East, Suite 2300
Los Angeles, California 90067

Attorneys (If Known)

E-filing

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 440 Commerce	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
			<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 894 Energy Allocation Act
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 2201 et seq.

Brief description of cause:

Declaratory Judgment of Non-Infringement, Invalidity and Unenforceability of U.S. Patent No. 7,193,149

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE

"NOTICE OF RELATED CASE".

CV-07-4789 AHM(RZx), Central District of California, Honorable A. Howard Matz

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/28/08

[Signature]